

REMARKS

Claims 1-20 and 22-25 are currently pending in this application. Claims 1 and 23-25 have been amended. Applicant has carefully reviewed the final Office Action and the Advisory Action and respectfully requests reconsideration of the claims in view of the RCE filed herewith and the remarks presented below.

Oath/Declaration

A substitute Declaration was submitted on January 3, 2008.

Double Patenting

Claims 1-20 and 22-25 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-9, 11, 13-20 and 23-25 of copending application serial no. 10/782,684. Applicant prefers to hold this matter in abeyance pending notification of allowable subject matter in the present application.

Claims Rejections Under 35 U.S.C. §102

Claims 1-6, 9, 10, 12-14 and 22-25 were rejected under §102(a,e) as being anticipated by U.S. Patent Publication 2003/0144595 (Lade).

Independent claim 1 recites an implantable medical device comprising an implantable housing having therein a temporary memory and a long-term memory interfacing with the temporary memory and operative to record diagnostic data stored in the temporary memory. Independent apparatus claims 24 and 25 also relate to implantable medical devices that include an implantable housing having therein a temporary memory and a long-term memory interfacing with the temporary memory and for recording diagnostic data stored in the temporary memory. Claim 23 relates to a method performed by an implantable medical device and involves recording data in an implanted temporary memory and an implanted long-term memory that interfaces with the implanted temporary memory.

Lade discloses an implantable microprocessor 60 with a memory, into which physiological data are continuously stored, with the oldest data being overwritten by the newest data. See paragraph [0045]. If a trigger event occurs, data from the microprocessor memory is written into memory 94 where it is stored for subsequent download to a device 102 that is external to the implantable device. See paragraph [0049]. Lade also discloses a data acquisition system 90 for storing digital signals corresponding to ECG signals. Lade, however, does not describe any conditions under which data is not stored or recorded in the data acquisition system.

In the Office Action, the Lade memory 94 is considered to correspond to Applicant's temporary memory. The Office Action, however, fails to clearly identify what element of Lade corresponds to Applicant's long-term memory. The memory of microprocessor 60 cannot reasonably be considered Applicant's long-term memory because the Lade microprocessor memory does not receive data from the Lade memory 94 and thus cannot correspond to a long-term memory that records diagnostic data stored in a temporary memory – as recited in Applicant's claims. The Lade external device 102, to which data from memory 94 is downloaded, also cannot reasonably be considered Applicant's long-term memory because it is an external memory – not a memory that is within an implantable housing – as recited in Applicant's claims.

In the Advisory Action, an alternate interpretation of Lade, presented for the first time, suggests that Lade's data acquisition system 90 corresponds to Applicant's temporary memory and Lade's memory 94 corresponds to Applicant's long-term memory. As stated above, Lade does not teach or suggest any conditions under which data is not stored or recorded in its data acquisition system. More specifically, Lade does not teach controlling the recording of diagnostic data such that no data is recorded in the data acquisition system (i.e., temporary memory) until the detection of an impending cardiac arrhythmia, wherein the cardiac arrhythmia indicated as impending, is not currently present – as recited in Applicant's claims.

In view of the foregoing, Applicant submits that Lade fails to disclose the combinations of elements and features recited in independent claims 1, 23, 24 and 25. Accordingly, Applicant requests reconsideration of the §102 rejections of these claims and their respective dependent claims.

Claim Rejections Under 35 U.S.C. §103

Claims 7, 8 and 15-20 were rejected under 35 U.S.C. §103(a) as being unpatentable over Lade in view of Legal Precedent. Claim 11 was rejected under 35 U.S.C. §103(a) as being unpatentable over Lade in view of Official Notice.

In view of the foregoing analysis of independent claim 1 in view of Lade, Applicant believes that the rejections under §103 are rendered moot as dependent claims 7, 8, 11 and 15-20 depend from allowable independent base claim 1.

CONCLUSION

Applicant has made an earnest and bona fide effort to clarify the issues before the Examiner and to place this case in condition for allowance. Therefore, allowance of Applicant's claims 1-20 and 22-25 is believed to be in order.

Respectfully submitted,

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Date

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